

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

TIMOTHY W. YEUNG et al.,

Plaintiffs and Respondents,

v.

EMERY SOOS,

Defendant and Appellant.

B165939
(Los Angeles County Super. Ct.
No. YC038599)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed on June 16, 2004, and certified for publication be modified in the following particular:

On page 7, the second full paragraph under the subheading Void for Lack of or Improper Service is deleted and replaced with the following paragraph:

If service of summons was not made or was improper, and actual notice was not received, the default judgment is void for lack of personal jurisdiction. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444.) On appeal, defendant contends he was not properly served by substitute service and did not receive actual notice. However, he did not raise this ground in the motion to vacate the default and default judgment. Defendant may not raise this issue for the first time on appeal.

Appellant's petition for rehearing is denied.

There is no change in judgment.